IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CRIMINAL APPLICATION NO. 1850 OF 2004

IN

CRIMINAL APPEAL NO. OF 2004

Narendra Balchandra Maniyar .. Applicant

versus

Naresh H.Khanchandani & Anr. .. Respondents

...

Mr.Abhijit Kulkarni i/b R.K. Parmar for the applicant.

Mrs.Indrayani Koparkar i/b N.P. Deshpande for the respondent no.1.

Mr.D.P. Adsule, APP for the State.

CORAM : V.M. KANADE, J

DATED : 24th November 2004.

P.C:-

1. Heard the learned counsel appearing on behalf of the applicant and the learned counsel appearing on

behalf of the respondents.

2. This is an appeal filed by the original complainant challenging the order passed by the JMFC Court no.1 Pune dated 21.2.2004. By the said order, the complaint filed by the appellant was dismissed for want of prosecution. This appeal can be disposed of at the admission stage. Hence, leave granted. Appeal is taken up for hearing forthwith.

3. The short question is whether the trial court was justified in dismissing the appeal for want of prosecution. The learned counsel appearing on behalf of the appellant has stated that the complainant's Advocate had wrongly entered the date in his Advocate's diary and as a result he was not present when the matter was called out. The learned counsel for the applicant has taken me through the roznama. He has submitted that the applicant has remained present on most of the dates.

4. However, the fact remains that the appellant had remained absent on three dates. However, I am of the view that the explanation given by the appellant is a plausible explanation and it is possible that

since a wrong date was noted in the diary, the appellants counsel could not remain present. The impugned order is therefore, set aside and quashed. The appellant however will have to pay cost to the respondents at Rs.1,000/- within a period of four weeks. Costs to be paid directly to the respondents by cheque or demand draft. Appeal is therefore, allowed.

5. Matter is remanded to the trial Court. Certified copy expedited.

V.M. KANADE, J